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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,094	11/21/2001	Elisa J. Bernklau	2730-65-PUS	8451

7590

06/18/2002

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EXAMINER

ARK, DARREN W

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 06/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/831,094

Applicant(s)

BERNKLAU ET AL.

Examiner

Darren W. Ark

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 9 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lew et al. 5,607,684.

Lew et al. discloses applying an organic component (dry corn cob grits), applying in conjunction with the component, an effective amount of a compound selected from the group as claimed (col. 5, lines 53-end and col. 6, lines 1-52).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lew et al. 5,607,684 in view of Fujimoto 6,255,340.

In reference to claims 1, 3, 5, and 6, Lew et al. discloses applying an organic component (dry corn cob grits with a size of 40-60 mesh), applying an effective amount of insecticide (col. 5, lines 53-end and col. 6, lines 1-52) with the organic component,

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the component applied by a method selected from the group consisting of plowing the compound into a field onto which a crop is to be grown and applying the compound between the rows of crop plants (banding; also see col. 10, lines 53-end and col. 11, lines 1-7). Lew et al. does not disclose the use of a neonicotinoid insecticide including thiomethoxam. Fujimoto discloses the use of neonicotinoid compounds for controlling targeted pests such as *Diabrotica* spp. (see col. 1, lines 18-end, col. 2, and col. 3, lines 1-18) wherein the compound is employed on a solid carrier, including an ear of corn. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the neonicotinoid of Fujimoto on the organic component of Lew et al. in order to provide an alternative insecticide which effectively controls the population of corn root worms.

In reference to claim 2, Lew et al. discloses banding and also discloses placing the baits along at least one of the sides of the seed-containing furrow or post-emergent to or along a furrow containing plants.

In reference to claims 7 and 8, Lew et al. discloses a source of CO<sub>2</sub> emitting agent (dry corn cob grits), but does not disclose a neonicotinoid insecticide including thiomethoxam. Fujimoto discloses a source of CO<sub>2</sub> emitting agent (ear of corn) with a neonicotinoid applied thereon. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Lew et al. by substituting for the insecticide used thereof, a neonicotinoid insecticide as taught by Fujimoto in order to effectively control the corn rootworms with an alternative insecticide that proves effective against them.

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**Conclusion**


5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Holmes '913 discloses the use of thiomethoxam to control *Diabrotica* spp.; Payne et al. '695 discloses using *Bacillus thuringiensis* microbes against select coleopteran pests e.g. *Diabrotica* sp.; Losel et al. '638 discloses the use of nicotinoids to control *Diabrotica* sp.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M, T, Th, & F, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4195 for regular communications and (703) 306-4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA   
June 13, 2002